



Ohio Prosecuting Attorneys Association

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Substitute SB 3 As Pending in House Committee
Opponent Testimony
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Chairman Lang, Vice-Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for the opportunity to provide written opponent testimony today on the Substitute version of Senate Bill 3 that was adopted by this Committee on December 9, 2020. I will keep these written remarks short as they are intended to make clear to the committee that the substitute version of the bill does not address concerns that our Association has previously raised about reduced penalties for drug trafficking, practical implications for drug trafficking prosecutions, undermining treatment efforts and drug courts, and reducing the perceived dangerousness of deadly drugs.

Drug Trafficking

While we do appreciate the fact that the substitute version of Senate Bill 3 leaves current law F1, F2, and F3 drug trafficking quantities in place, the bill now reduces penalties for these same drug traffickers in other ways. Specifically, the bill removes the presumption for prison for F3 trafficking offenses, removes the mandatory prison time for portions of the F2 trafficking offenses, and still repeals the Major Drug Offender specification for people trafficking in the largest amounts of Schedule I and II drugs including meth. It remains unclear to us why the proponents of the bill continue to support reducing penalties for F1, F2, and F3 level drug dealers when the bill has been repeatedly touted as being about “low-level” possession amounts. It remains unclear to us how reducing penalties for these higher end traffickers, consequently making it easier to sell drugs, helps “low-level” possession offenders at all. We continue to be opposed to reduced penalties for drug dealers.

Misdemeanor Possession

The bill still allows a person to carry around a larger amount of drugs than what the typical addict has for personal use. Most addicts possess around 1 gram, the equivalent of about 1 days-worth of drugs. And yet, by making F4 possession offenses misdemeanors, the bill makes it a misdemeanor for a person to have in their possession an amount of drugs that far exceeds a personal possession amount. These are simply not “low-level” personal possession amounts of deadly drugs. These are amounts that can and will be possessed for sale in order for some dealers, who may or may not be addicts, to avoid harsher punishments. Those who are only users will have little incentive to cooperate with law enforcement to help identify the dealers. They will also have little incentive to get into and complete treatment given the lack of external motivation that will be provided by a misdemeanor offense. The reality is that this will make it more difficult connect some addicts to treatment. We continue to be opposed to the concept of misdemeanor drug possession, particularly in the quantities in this bill.

Community Control Sentences

The substitute version of the bill added language that reduces the length of community control sentences from five years to three years for F3's and from five years to two years for F4's and F5's. It also requires that the length and intensity of supervision of an offender be determined only as indicated by a risk assessment tool. These provisions unnecessarily limit a court's discretion and ability to decide what length and level of supervision offenders, with often intractable problems, receive. Courts already have the ability to decrease the length of a sanction and the restrictiveness of a sanction based on a person's success. This provides courts with appropriate flexibility and offenders with appropriate motivation to succeed. These provisions of the bill should be removed.

Other Concerns

There continues to be a variety of other issues in this bill that deserve more careful attention, debate, and vetting. These include the changes to the sections on jurisdiction that discuss a prosecutor "accepting" plea agreements that reduce unclassified misdemeanors or other misdemeanors to any other misdemeanor of a lesser degree. Prosecutors do not "accept" plea agreements. Courts do. And overall, we do not think that this provision accomplishes its intended goal of giving municipal courts flexibility to handle unclassified misdemeanor drug possession cases. Our concerns include the conditions for overcoming and level of proof required to overcome the presumption for treatment. They include the expansion of good Samaritan without debate over whether the current good Samaritan law is working as intended or whether it should be fixed before being expanded. They include the definition of "technical violation" included in the bill that would supersede the Supreme Court of Ohio's decision in July of this year in *State v. Nelson* (2020-Ohio-3690). These are all matters that deserve more deliberation.

There continue to be better ways to ensure that addicts can receive the treatment they deserve that would not have the negative impacts on addicts, their families, and our communities that will result from Senate Bill 3. We continue to oppose the bill and urge committee members to do the same.